

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.2096/2000
(State of Raj. & Ors. Vs. Bhanwar Singh)

Date of order : 20.11.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. S.N. Tiwari, Dy. Govt. Advocate.
Mr. Manish Patel for Mr. M.S. Singhvi, for
respondent No.1.

The State has preferred this writ petition challenging the order dated 22.10.1999 passed by Rajasthan Civil Services Appellate Tribunal whereby the learned Tribunal has set aside the order of recovery dated 29.6.1998 and directed the petitioner-Department to conduct proficiency test as per the amendment made on 12.10.1992 in Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 (hereinafter "the Rules of 1957").

According to the facts of the case, the non-petitioner No.1 was initially appointed as LDC on urgent temporary basis for a period of six months in the pay-scale of Rs.490-840/- vide order dated

26.6.1986. The Addl. Director, State Litigation issued an order dated 9.7.1986 appointing and posting the persons at the places mentioned in the said order wherein the name of the non-petitioner No.1 is appearing at Sl. No.5. In pursuance of the said order, the non-petitioner No.1 was relieved from the Office of Registrar, Rajasthan High Court, Jodhpur on 15.7.1986. The non-petitioner No.1 joined his duties in the Office of Assistant Public Prosecutor, Bali and continued on the said post so also the District Collector, Pali allowed the annual grade increments to the non-petitioner No.1.

In pursuance of letter dated 23.1.1998 of the Joint Legal Remembrancer & Addl. Director, Legal Affairs (State Litigation), Rajasthan, Jaipur, the District Collector, Pali wrote a letter to the non-petitioner No.1 on 3.2.1998 asking him to submit the certificate whether he has passed the departmental test or he has passed R.P.S.C. examination. In response to that letter, it was submitted by the respondent No.1 that no test has been conducted by the department therefore, there is no question of passing any examination so also he has not cleared R.P.S.C. examination or any departmental examination. On the basis of said information given by the respondent No.1, the impugned recovery order was passed against him because he was allowed annual grade increments even though he was appointed on urgent temporary basis.

Learned Dy. Govt. Advocate argued that respondent No.1 was wrongly allowed the annual grade increments as he was not regularly appointed, therefore, he was not entitled for regular increments. Hence, the order of recovery was passed. There is no illegality in the order of recovery passed by District Collector, Pali. According to learned Dy. Govt. Advocate, the Rajasthan Civil Services Appellate Tribunal has committed error while quashing the order passed by District Collector, Pali for recovery of the amount paid to the respondent No.1 in connection with grant of annual grade increments.

Learned Dy. Govt. Advocate vehemently contended that the order passed by learned Tribunal is illegal and in contravention of the Rules. Admittedly, the respondent No.1 was appointed on urgent temporary basis and he did not clear any examination for regularizing his services, therefore, the order passed by learned Appellate Tribunal dated 22.10.1999 may kingly be set aside.

Per contra, learned counsel appearing for respondent No.1 argued that the learned Tribunal has passed the order impugned while considering the important aspect of the matter that the respondent No.1 is continuing in service on the said post since 1986 though on urgent temporary basis and no test has

been conducted by the department as provided in Rajasthan Service Rules.

While inviting attention towards the judgment dated 6.1.1998 rendered by Division Bench of this Court in bunch of special appeals being D.B. Civil Special Appeal No.377/96 & three others, learned counsel for the respondent No.1 contended that even the employee appointed on urgent temporary basis is also held entitled for annual grade increments, if he is appointed in a particular pay-scale. It is further contended by learned counsel for the respondent No.1 that according to the aforesaid judgment of Division Bench of this Court, the benefit has been extended to those employees who were appointed like the respondent No.1 on urgent temporary basis, therefore, there is no question or recovery from the respondent No.1. Hence, it is prayed that the order passed by learned Tribunal does not require any interference by this Court and the writ petition deserves to be dismissed.

I have perused the entire record of the case as well as the judgment dated 6.1.1998 passed by Division Bench of this Court. In the said judgment, this Court has held that employee is entitled to grant of increments during the period of his temporary service, depending upon the terms of his employment as contained in the letter of appointment. In this Case admittedly the respondent No.1 was appointed in the

pay-scale of Rs.490-10-550-15-640-20-840.

In my opinion, the Tribunal has rightly passed the order for conducting test for regularizing the services of the petitioner in view of the amendment made in the Rules of 1957 vide notification dated 12.10.1992 in which it was categorically provided that those persons who were appointed on the post of LDC even on adhoc basis or on daily wages basis during the period from 1.1.1985 to 31.3.1990 and are still working as such on the date of issuance of notification shall be appointed on regular basis on availability of vacancy subject to the condition that they pass a performance test conducted by the Head of Department concerned within a period of three years in accordance with the syllabus prescribed in part IV of Schedule-I. The relevant abstract of the said notification dated 12.10.1992 reads as follows :

“(10) Notwithstanding anything contained in rule 7, all persons appointed as LDCs on adhoc basis or on daily wages basis during the period from 1.1.1985 to 31.3.1990 and are still working as such on the date this amendment comes into force shall be appointed on regular basis on availability of vacancy subject to the condition that they pass a performance test conducted by the Head of Department concerned within a period of three years in accordance with the syllabus

prescribed in part IV of Schedule-I. Such persons shall be allowed three chances to pass the said test to be availed within a period of three years.

Provided that if a person fails to pass the said test in three chances to be availed within a period of three years, he shall be liable to be removed from services”.

In my opinion, the controversy involved in the present writ petition is squarely covered by the judgment dated 6.1.1998 rendered by Division Bench in D.B. Civil Special Appeal No.377/96 (Chandra Shakhr Vs. State of Raj & Ors.) whereby the similarly situated persons were granted benefits of regular grade increments. The aforesaid judgment rendered by Division Bench was further upheld by Hon'ble Supreme Court and benefit has been extended to all those employees who were appointed in a particular pay-scale even on urgent temporary basis. Therefore, the Tribunal has rightly arrived at with the finding that there is no question of recovery from the respondent No.1 and the Tribunal has rightly passed the order for conducting proficiency test of the respondent No.1 for regularizing his services in accordance with the notification dated 12.10.1992 because admittedly the petitioner was appointed in between the period as mentioned in the notification dated 12.10.1992.

In these circumstances, there is no force in the writ petition. Accordingly, the writ petition is dismissed.

(GOPAL KRISHAN VYAS), J.

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